

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2530 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAGANLAL KALIDAS PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT PATEL for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1
SERVED for Respondent No. 2
MR SURESH M TRIVEDI for Respondent No. 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 10/12/97

CAV /JUDGEMENT

One Maganlal Kalidas Prajapati, Head Master of Balasinor Primary School No.1, Balasinor, has filed the present petition under section 482 of the Criminal Procedure Code to quash the prosecution registered against him, arising out of the FIR lodged by respondent

no.3 - Manjulaben, wife of Arunkumar Thakorlal at CR No.102 of 1991 by the police of Balasinor Police Station for the alleged offences punishable under sections 323, 504, 354 of the Indian Penal Code.

2 It is the case of the petitioner that when he joined as Head Master of Balasinor Primary School No.1, he found that the teachers in the said primary school were committing irregularities and misconducting themselves. There are in all 21 teachers in the said school. He then made a report against 9 primary teachers including respondent no.3, Manjulaben, wife of Arunkumar Thakorlal, Puriben Ranchhodbhai Patel and one Shankarbhai Nananbhai Gohil. On the strength of his report, the District Primary Education Officer issued show-cause notice to Shankarbhai N Gohil to show cause as to why he should not be awarded punishment as per the provisions of the Gujarat Panchayat Service (Discipline and Appeals) Rules. It is further the case of the petitioner that on account of his raising objection to the commission of the irregularities and the misconducting themselves, most of the teachers in the said school were against him and when the said show-cause notice was served on Shankarbhai Nanabhai Gohil, they decided to harass the petitioner and to bring him into trouble. Then they managed to see with the help of co-teachers to transfer him from the school by getting the transfer order on June 27, 1991. As the said transfer order was mala fide and illegal, the petitioner preferred Special Civil Application No.4214 of 1991 in this Court and was successful in getting a stay order from the implementation of the said transfer order. This action on his part enraged those nine teachers against whom he had made a report and they decided to see that he was brought in trouble. Then false complaints were made against him by making allegations that he was taking money in giving admissions, he was misappropriating the amount meant for mid-day meals and he was also misappropriating the amounts of the scholarships. But, he had not succumbed to all those activities and tactics.

3 On 17th July 1991 two girls had come to the school in order to take admission in 4th standard along with their parents. Thereafter the petitioner took those two girls along with their parents to the class room where respondent no.3 was teaching and asked her to give admission for both the students in her class and to allow them to sit in the class room. But, Manjulaben refused on his face to allow both the girls to enter her class. Thereupon he told respondent no.3, Manjulaben, that she was bound to obey his orders but she reiterated by saying

that she was not going to obey his orders and he should do whatever he wanted to do. After this incident, he returned to his office. According to him, before he could make report of this incident to his superiors, Manjulaben and other teachers hatched a plan and Manjulaben lodged a false complaint with the police against him with the help of the Police Sub-Inspector, Balasinor, who was tenant of Smt. Fuliben R Patel. According to him, respondent no.3 - Manjulaben has concocted a false incident alleging that the petitioner had come to her class for the admission of those girls but she refused to the same for want of written order from him. According to her, the petitioner himself had instructed all the teachers not to give any admission to the students unless there was a written order by him and because of the said instructions, she had refused to give admission. He further contends that the Education Department has made thorough enquiry . In that enquiry statements of those children and their parents were also recorded. On enquiry it was found that the complaint lodged by Manjulaben was false and she has been awarded a penalty of stopping one increment for lodging false complaint. The petitioner therefore seeks quashing of the said FIR lodged by respondent no.3 Manjulaben.

4 In response to RULE issued in this matter, respondent no.2 has filed his report mentioning therein that he has recorded the statements of about nine persons and the evidence collected by him supports the complaint lodged by respondent no.3. But, he has not said anything as regards the claim of the petitioner about his giving report about the nine teachers and because of the same he being falsely implicated in the case.

5 Respondent no.3 has also filed her affidavit-in-reply and she has stated that as a matter of fact the petitioner himself is a corrupt person; there is already prosecution against him; he was also suspended but he managed to revive his suspension and the version given by him regarding the incident is false. She thus contended that the present petition should be rejected.

6 I am aware that I am dealing with a proceeding under section 482 of the Criminal Procedure Code. It is settled law that at this stage it is not permissible for me to weigh the evidence and I have to accept the averments made in the present FIR by giving them the face value. But, at the same time, it is very well settled law that where the allegations made in the FIR are so absurd and inherently improbable, where on the basis of which no prudent person can ever reach a conclusion that

there is sufficient ground for proceeding against the accused, then only the High Court can interfere and quash the process issued by the learned Magistrate. In the case of Punjab National Bank v. Surendra AIR 1996 SC 1815, the following principles were laid down:-

"Judicial process should not be an instrument of operation or needless harassment. The court should circumspect and judicious in exercising the discretion and should take all the relevant facts and the circumstances into consideration before issuing the process otherwise it would become an instrument in the hands of private complainant as a vendetta to harass the person needlessly."

Therefore, bearing the above principles in mind, I proceed to consider the facts before me.

7 From the affidavit in reply filed by respondent no.3, it is quite clear that the claim of the present petitioner that he has made reports against nine teachers including respondent no.3 for their alleged misconduct and commission of irregular activities is not in dispute. From her affidavit-in-reply it is also quite clear that in pursuance of the said report submitted by him a show-cause notice was issued against one of the teachers, namely, Shankarbhai N Gohil. From her affidavit-in-reply it is also quite clear that the claim of the petitioner that those nine teachers are making accusations against him for his alleged commission of misappropriation and corrupt practices. No doubt, she says that they are not false. She also admits that petitioner was transferred but on account of his approaching this Court transfer could not be effected.

8 In view of the admitted position, namely, that the present petitioner had made a report against nine teachers including respondent no.3 and those nine teachers were also making allegations against him for corrupt practices and other things, I have to consider as to whether the incident in question is at all probable and whether a prudent person will believe it.

9 Respondent no.3 has admitted in her affidavit that the present petitioner had asked to give admission to two girls. She has also admitted that she had refused to give admission to those students in her class. Now she is trying to twist this incident that she had refused to give the admission because there was no written order of the present petitioner. But the fact remains that she had refused to give admission. Admittedly, the present

petitioner had already hostile atmosphere in the school and when he was aware that the group of the present respondent no.3 had the political background and they had managed to transfer him from the school, it is not at all probable that he would misbehave, as narrated by respondent no.3. It is not at all probable that in the presence of the students and that too in the open day light, Head Master who knows very well that there is hostile atmosphere against him, would try to assault a teacher of the opposition group and attempts to outrage her modesty by tearing her blouse as claimed by respondent no.3 - Manjulaben.

10 The claim of the petitioner that the department has made inquiry and the department on making inquiry having been found that the incident was false one and because of the same they had awarded penalty of stoppage of one increment is also admitted by respondent no.3 in her affidavit-in-reply. Therefore, that circumstance also shows that the incident in question is not at all believable.

11 No doubt, the report filed by respondent no.2 does show that there are witnesses who had supported the version given by respondent no.3. But it is pertinent to note that those witnesses who had supported the version of respondent no.3 are mainly belonging to the group against which the present petitioner had made a report. Out of the nine witnesses mentioned by him in his report, 7 persons are the persons against whom the petitioner had made a report. He has not recorded statements of two students as well as their parents.

12 Therefore, in view of all the above considerations, in my opinion, no prudent man will at all accept and believe the complaint lodged by respondent no.3 and therefore in these circumstances, this is a fit case in which the FIR lodged by respondent no.3 deserves to be quashed. I therefore allow this petition. I hereby order that the prosecution arising out of FIR lodged by respondent no.3 - Manjulaben Arunkumar Thakarlal at CR No.102 of 1991 registered in Balasinor Police Station be quashed. No order as to costs. Rule is made absolute.

(S.D. Pandit)
